

Dated: July 21, 2008.

**F.G. Myer,**

*Captain, U.S. Coast Guard, Captain of the Port, Portland.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2008-0726]

RIN 1625-AA00

#### Temporary Safety Zone: Astoria Regatta Assoc. Display, Astoria, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Astoria Regatta Assoc. Display to be held on the waters of the Columbia River in the vicinity of Astoria's waterfront in Astoria, Oregon. The safety zone will restrict vessels from entering the designated area during the fireworks display. This temporary rule is needed to provide for the safety of life on navigable waters during the event.

**DATES:** This regulation is effective from 8:30 p.m. to 11:30 p.m. on August 9, 2008.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2008-0726 and are available online at [www.regulations.gov](http://www.regulations.gov). They are also available for inspection or copying at two locations: the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and Coast Guard Sector Portland, 6767 N. Basin Ave., Portland, OR 97217 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** BM2 Joshua Lehner, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217-3992, and (503) 240-9311.

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The

emergent and dynamic nature of the event did not allow previous notice. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following the normal rule making procedures in this case would be impracticable and contrary to the interests of public safety.

#### Background and Purpose

The Coast Guard is establishing a temporary safety zone to allow for a safe fireworks display. This event occurs on the Columbia River in the vicinity of Astoria's waterfront, Astoria, Oregon and is scheduled to start at 8:30 p.m. and last until 11:30 p.m. on August 9, 2008. This event may result in a number of recreational vessels congregating near the fireworks display. The firework display poses several dangers to the public including excessive noise, falling firework debris and possible explosion. Accordingly, the safety zone is needed to protect watercraft and their occupants from safety hazards associated with the event. This safety zone will be enforced by representatives of the Captain of the Port Portland. The Captain of the Port may be assisted by other federal, state, and local agencies.

#### Discussion of Rule

This temporary rule will create a safety zone to assist in minimizing the inherent dangers associated with fireworks display. These dangers include, but are not limited to, excessive noise, falling firework debris and possible explosion. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Due to these concerns, public safety requires these regulations to provide for the safety of life on the navigable waters.

#### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the safety zone established by this rule encompasses a relatively small area

on the Columbia River near Astoria's Waterfront in Astoria, OR, does not shut down the shipping lane, and will be of very short duration. This regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the fireworks display. This rule will be effective from 8:30 p.m. to 11:30 p.m. on August 09, 2008. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Columbia River during the time mentioned under

*Background and Purpose.* This safety zone will not have a significant economic impact on a substantial number of small entities due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters, small passenger vessel operators and commercial barge operators. Because the impacts of this proposal are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business

Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

#### Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have concluded, under the Instruction, that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a safety zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record Keeping Requirements, Security Measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary section in 165.T13-053 is added to read as follows:

#### § 165.T13-053 Safety Zone; Astoria Regatta Assoc. Display, Astoria, Oregon.

(a) *Location.* The following area is a safety zone: The waters of the Columbia River from surface to bottom, encompassed by lines connecting the following points: from the southern bank of the Columbia River at latitude 46°11'34" N, longitude 123°48'33" W, thence North to 46°11'52" N, 123°48'35" W, thence East to latitude 46°11'52" N, longitude 123°48'19" W thence to the southern shoreline located at 46°11'39" N, 123°48'13" W and continuing back along the shoreline to the first point in the vicinity of Astoria's waterfront on the Columbia River in Astoria, Oregon.

(b) *Enforcement period.* This rule will be in effect from 8:30 p.m. to approximately 11:30 p.m. on August 9, 2008 in the described waters of the Columbia River in Astoria, Oregon.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel not participating in the actual fireworks display may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representatives.

(d) Vessels wishing to request permission to enter the safety zone may contact the official patrol on VHF Channel 16 or by calling 503-240-9311.

Dated: July 21, 2008.

**F.G. Myer,**

*Captain, U.S. Coast Guard, Captain of the Port Portland.*

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